<u>AMENDMENT NO. 17</u>   APR 1 1 2020

<u>**CONTRACT TITLE:**</u>   Learning Content Management Systems & Related Services & Support

<u>**CONTRACTOR**</u>	<u>**SUPPLIER ID**</u>	<u>**CONTRACT NO.**</u>
Blackboard, Inc. 1111 19th St. N.W. Washington, D.C 20006	1000011844	4400001675

By mutual agreement, Contract 4400001675 is amended to incorporate the attachment for FCPS use of Blackboard Collaborate as described in the attachment.

All other prices terms and conditions remain unchanged.

<u>ACCEPTANCE:</u>

BY: _____
Signature
DocuSigned by:
Bill Jones
3B5189B5B3F7444...

Bill Jones
_____
Printed Name

Deputy General Counsel
_____
Title

April 11, 2020
_____
Date

Michelle R. Pratt
Director

/MRP

<u>DISTRIBUTION:</u>
Contractor
FCPS - IT – Jean Welsh

JO
4/13/20

Blackboard Collaborate Amendment

This amendment ("Amendment") amends Amendment 16 dated May 22, 2019 (the "Order Form") between Blackboard Inc. ("Blackboard") and Fairfax County Public Schools ("FCPS", together with Blackboard, the "Parties"). The Parties agree to amend the pricing in the Order Form with the following terms effective April 11, 2020 (the "Effective Date").

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

A. Product and Pricing Summary

1. The following terms are in addition to, and not in lieu of, the current price and terms of the Order Form.
2. This Amendment is intended to address FCPS's use of Collaborate for the two (2) month period starting on April 13, 2020, after which time, use of Collaborate pursuant to these terms shall expire (except with respect to the payment obligations set forth below), the Amendment 16 (and use of Collaborate thereunder) shall still be in full force and effect, and the Parties will cooperate in good faith to reassess and review the terms of this Amendment to determine whether an additional amendment is necessary.
3. All FCPS users must all use Collaborate Ultra only, except for those current and summer-school classes already designed by FCPS using Collaborate Original.
4. FCPS's usage of Collaborate is limited by Authorized User. An "Authorized User" means any individual who is a student, teacher, parent/guardian of student, or employee of yours (including invited third-parties thereof). For purposes of counting Authorized Users, parents/guardians of a student and that student attending via the same Collaborate sign-in will count collectively as one Authorized User.
5. The total price is **$0.75 per student and full-time employee which is 188,000 students and 24,165 employees for a total of 212,165 Authorized Users**, resulting in a per month fee of **$159,124 per month for two (2) months**. FCPS will not exceed 212,165 concurrent Authorized Users. This price is inclusive of all telephone and video storage fees.
6. The attached Service Level Agreement (SLA) is incorporated as Exhibit A and applies to Blackboard Collaborate Original and Ultra and will provide under a 99.9% uptime SLA where all definitions and credits have the same meaning as LEARN in the FCPS contract and amendments.

B. Term

1. The Term of this Amendment shall begin on the Effective Date and expire upon the expiration of the current term of the Order Form, unless extended by the Parties' via a subsequent amendment.

C. Payment Terms

1. The monthly fee of $159,124 shall be invoiced on the first day of each month during the Term of this Amendment and be due Net 30. All pricing above is in United States currency.

D. Special Provisions

1. All other terms between the Parties shall remain the same.

Agreed:

BLACKBOARD

DocuSigned by:
Bill Jones
3B5189B5B3F7444...
_____
Signature

BILL JONES, DEPUTY GENERAL COUNSEL
_____
Name and Title (printed)

April 11, 2020
_____
Date

FCPS:

Michelle Pratt
_____
Signature

Michelle Pratt, Director
_____
Name and Title (printed)

4-11-2020
_____
Date

EXHIBIT A

Blackboard Collaborate Service Level Commitment

NOTE: CUSTOMER ACKNOWLEDGES THAT NOTHING IN THIS EXHIBIT B CREATES ANY ADDITIONAL WARRANTIES OR GUARANTEES, OTHER THAN AS SET FORTH IN THE MANAGED HOSTING SCHEDULE, THE SOFTWARE SCHEDULE AND/OR THE MASTER TERMS, AS APPLICABLE.

SERVICE LEVEL

Security:
- Single point of entry to co-location is guarded 24 hours a day with access controlled by an access database and video surveillance
- Monitoring of the co-location area and only those persons authorized by Blackboard's access list are allowed past a central point.
- Surveillance cameras located throughout the facility capture activity to help ensure no unauthorized entry to protected areas.

Power:
- State-of-the-art generators clean and condition commercial electrical power to remove irregularities in the signal. Power is run through the generators before being passed into the facility.
- In the event of a loss of power from the grid, power backups are utilized in the following order: commercial utility underground conduits, two-hour battery backup (industry standard only 15 minutes), diesel generator with full-load capability and additional fuel supply.

Network:
- Redundant Internet connections through dual Tier-1 Internet Service Providers

Startup:
Blackboard is responsible for the setup and configuration of the necessary hardware, software and all components of the Customer server(s). This includes but not limited to, the server hardware and software, telecommunications hardware and software, security software and other software that is reasonably necessary to operate and maintain the Hosted Software.

Initial Access Date:
The Hosted Software is typically accessible from the hosting site within 7 business days after execution of the Managed Hosting Schedule, provided that the Master Terms and the relevant Software Schedule have been executed, and provided that Customer has provided to Blackboard a URL and any other information required by Blackboard. Blackboard shall provide Customer with procedures for access; the procedures may include, without limitation, provision of any access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures, to the limited extent any of the foregoing may be necessary to enable Customer to permit its Authorized End Users to access and use the Hosted Software as contemplated in this Managed Hosting Schedule.

Availability/Service Credit:
The Hosted Software is accessible 24/7, with a 99.9% targeted uptime. 99.9% uptime means that for 99.9% of the time during any calendar month, the Managed Hosting Services shall be available. Unavailability is a condition in which there is unavailability of the Hosted Software due to hardware failure OR sustained latency within the Blackboard hosting facilities where the Hosted Software is inaccessible due to a failure of Blackboard to provide Managed Hosting Services during such period; unavailability does not include packet loss, latency or network unavailability due to scheduled maintenance, or inability of a user to connect with the Managed Hosting Services due to Internet or telecommunications problems outside the control of Blackboard.   In order to receive any service credit, Customer must notify Blackboard within seven (7) days from the time Customer becomes eligible to receive a service credit. Failure to comply with this requirement will forfeit Customer's right to receive a service credit. In order to be eligible, Customer must be in compliance with the Agreement including the contracted Active User Capacity and storage quota. The aggregate maximum number of service credits to be issued by Blackboard to Customer for any and all downtime periods and performance problems during any given calendar month shall not exceed one month of service. Service credits are issued as followed and shall be Customer's sole remedy for failure to meet the foregoing service levels:

Length of Unavailability (per calendar month)	Service Credit
1 to 4 hours of aggregate unavailability below 99.9%	1 day of service fees credited (i.e., 1/30 monthly fees)
4 to 48 hours of aggregate unavailability below 99.9%	2 days of services fees credited (i.e., 1/15* monthly fees)
48 to 96 hours of aggregate unavailability below 99.9%	5 days of service fees credited (i.e., 1/6 * monthly fees)

*Each block of 96 hours of aggregate unavailability thereafter shall be credited 5 days of service fees.
*All Service Credit shall be applied to the next period's Managed Hosting fees.

Backup and Disaster Recovery:
Blackboard provides comprehensive redundant backups which are stored online and at a separate facility. Blackboard retains backup data for one month. In the event of a disaster, Blackboard will use reasonable efforts to restore service. Blackboard will not attempt to restore service if such attempt shall put Blackboard, its employees or its agents at risk for injury.

Outages
If a system outage occurs, Blackboard will notify Customer's designated technical contact via email. This notice will include the reason for the system outage and estimated time for restoration of Managed Hosting Services if Blackboard knows this information when it gives this notice.

Following recovery from any particular system outage, Blackboard will provide Customer with a post-incident summary that will include:

- cause of the system outage (if determined);
- method used to correct the problem; and
- measures Blackboard will take to prevent similar system outages in the future (if any).

Upon receipt of notification of a problem with the Blackboard system or the Managed Hosting Services, Blackboard will investigate the problem and determine if a system outage exists. If a system outage exists, Blackboard will provide Customer with a time estimate for resolution of the problem, if known at that time. Blackboard will promptly commence remedial activities and use commercially reasonable efforts to resolve the system outage within the time estimate provided to Customer.

MONITORING AND PERFORMANCE
Blackboard will make network performance reports available to the customer via www.behind.blackboard.com or as requested. These reports are designed to provide usage and performance information to help in the continual monitoring and improvement of the design and operation of the hosted environment.. Upon request by Customer, Blackboard will provide Customer with monthly reports including information on Managed Hosting Services usage, system outages and changes made to the Blackboard system during that month. Upon request Blackboard will provide the Customer with the following report:

Specific System Outage Details:
Time of outage
Length of outage
Affected areas
Reason for outage
Customer contact notified (if any)
Remedy to prevent outage reoccurrence (if any)

Customer acknowledges and agrees that any of the foregoing reports shall constitute Blackboard's Confidential Information for purposes of this Agreement.

Ongoing:

The hardware, software and network are monitored and maintained by Blackboard and will be accessible twenty-four (24) hours a day, seven (7) days a week, in accordance with industry standards, except for scheduled maintenance and required repairs, in advance of which the Customer shall be notified by email.

- Blackboard maintains responsibility for all day-to-day server maintenance. Server maintenance may include, but is not limited to, hardware upgrades, OS upgrades, patch installations, database administration, server user administration and performance tuning.
- Blackboard maintains a software monitoring system to provide real-time information about the Managed Hosting environment to the Blackboard Network Operations Center (NOC), to assist Blackboard system administrators proactively monitoring the Managed Hosting environment.
- Blackboard maintains the functioning of all hardware components for which it is responsible under this Exhibit and will replace any failed components. Hardware replacement will begin immediately upon identification of the hardware failure and if cannot be completed with a reasonable amount of time, the access to the Hosted Software will be redirected to a temporary server to reduce downtime.
- Blackboard implements a backup strategy of performing daily backups with a retention period of 1 month. Where possible, data is replicated to an offsite location.
- Blackboard collects bandwidth usage and web hit statistics on all Customer-hosted machines. This information will be provided upon request.

DATA CENTER SPECIFICATIONS

Blackboard houses servers in a facility that offers environment control, security, and backup power, as more specifically described below:

Environment:
- The data center is designed to maintain a constant temperature of 68¼F, plus or minus 2¼F, with humidity of 45%.

Server Setup:
The servers are set up to maintain fail back, redundant connectivity, comprehensive backups, 24x7 monitoring, and 99.9% uptime.

CUSTOMER RESPONSIBILITES. Blackboard is not responsible for management and actual use of the features and function of the Hosted Software. Customer bears all responsibility for such management and actual use, including, without limitation:

- The Customer has full access to the Administrator Menu and is responsible for the following:
- Creating/Removing Users including Students, Teachers, System Administrators, etc.
- Modifying all User Information
- Creating/Removing all Course Web Sites
- Building and Managing all Course Web Sites
- Customization to the Site
- System Usage Tracking Reports
- Deciding which product features will be available or unavailable, how much functionality instructors will be allowed, etc.
- Choosing Icon Themes
- All changes to the Blackboard-named URL. All Blackboard Customers are assigned a URL that reads http://institutionname.blackboard.com. The institution is allowed to pick the "institutionname". However, any re-directs to other URLs are the responsibility of the Customer and not Blackboard. For example, if the Customer chooses the URL http://institutionname.org, the institution is responsible for the redirect to the http://insitutionname.blackboard.com site using a CNAME record. Any IP addresses are allocated by Blackboard to Customer are in accordance with the American Registry for Internet Numbers (ARIN) guidelines for Internet Numbers and applicable agencies.

BUILDING BLOCKS POLICY. If Customer has implemented the Blackboard Software prior to purchasing Managed Hosting Services or plans to a implement a Building Block, Blackboard recommends the following steps before installing a Building Block on a production system: 1) apply and thoroughly test all Building Blocks in Customer's test/development environment prior to implementing the Building Block in the production environment; and 2) before requesting an update/upgrade to Blackboard on Customer's production environment, Customer contacts the vendor of the Building Block or check the Building Blocks Catalog to ensure that Customer has the latest version prior to upgrading Customer's Hosted Software. If an issue arises with Customer's Hosted Software, Managed Hosting Service Support will work with Customer to troubleshoot the problem. If Managed Hosting Service Support isolates the problem as related to one or several Building Blocks, Managed Hosting may need to disable the Building Block to further troubleshoot the issue or to restore overall service.